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1946

File No. Abk II/46

Legal Department—

B BRANCH

Subject:— Rules and Notifications under the Bombay Abkari Act, 1878.

P. H.

File No. Abk II/46

Gen. 194 a.

354-B

NOTIFICATION.

Revenue Department,

Bombay Castle, January 1946.

Dangerous Drugs Act, 1930.

No. .- The following draft of a notification which the Government of Bombay proposes to issue in exercise of the powers conferred by sub-section (2) of section 8 of the Dangerous Drugs Act, 1930 (II of 1930), is published as required by sub-section (1) of section 36 of the said Act, for the information of all persons likely to be affected thereby, and notice is hereby given that the said draft will be taken into consideration by the Government of Bombay on or after ----------.

2. Any objections or suggestions which may be received by the Secretary to the Government of Bombay, Revenue Department, from any person with respect to the said draft before the aforesaid date will be considered by Government.

Draft Notification.

No. .- In exercise of the powers conferred by sub-section (2) of section 8 of the Dangerous Drugs Act, 1930 (II of 1930), the Government of Bombay is pleased to amend the Bombay Dangerous Drugs Rules, 1935, as follows, namely:-

1. In sub-rule (3) of rule 2 of the said rules, after the words 'any officer' the words "either generally or" shall be inserted.

2. For sub rule (1) of rule 4 of the said rules the following shall be substituted, namely:-

"(1) For the purposes of these rules the Collector shall be deemed to be subordinate to the Commissioner of Excise, Bombay, either on appeal by the party aggrieved or otherwise

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by the party aggrived or otherwise any order of the Superintendent of ~~Excise~~ Excise is liable to be modified or cancelled by the Collector and any order of the Collector is liable to be modified or cancelled by the Commissioner of Excise."

By order of the Governor of Bombay,

Secretary to Government.

SSM / 16/7/56.

Opium Act.
1878.

Notification.
Revenue Department,
Bombay Castle, 1945.

No. In exercise of the powers conferred by section 5 of the Opium Act, 1878 (I of 1878), the Government of Bombay is pleased to amend the Bombay Opium Rules, 1940, as follows, namely :-

In sub-rule (2) of rule 6 of the said rules, after the words " of this rule" the words, brackets and figures "and to a Superintendent of Excise the power of granting licenses given to him by clause (i) thereof" shall be inserted.

By order of the Governor of
Bombay,

Secretary to Government.

SSM / 16/7/56.

Office of the R.L.A.

R.D.-Draft notification No. II at page 9.-

The proposal is to delegate to the Superintendents of Excise powers under certain rules of the Bombay Dangerous Drugs Rules, 1935, by making specific amendments in those Rules. Instead of making specific amendments in the Rules as suggested, it would be desirable to have recourse to rule 2(3) of the Dangerous Drugs Rules and issue thereunder a notification authorising the Superintendents of Excise to exercise the powers of the Collector under the relevant rules. Rule 2(2) referred to defines "Collector" as meaning the Chief Officer in charge of the revenue administration of a district for the time being and includes any officer specially authorised by Government to exercise throughout the Province of Bombay or any specified area therein all or any other powers of a Collector under the Rules. As it is doubtful if the Superingendents of Excise can be generally authorise under this clause, an amendment has been suggested thereto so as to enable Government to issue a general notification authorising Superintendents of Excise to exercise powers of the Collector under the Rules. The draft notification No. II sent herewith incorporates the necessary amendment; it also includes amendment of sub-rule (1) of rule 41 as proposed. After issue of this notirication R.D. will no doubt take steps to authorise the Superintendents of Excise to exercise the powers of the Collector under the relevant rules.

2. R.D. draft notification No. III at p. 10 ante.

A revised draft notification No. III is sent herewith.

3. R.D. draft notification No.IV at pa. Section 16 of the Bombay Abkari Act referred to in item No. (ii) in column 4 of the R.D. draft notification refers to the pow r of the Collector to grant a license for the sale of an intoxicant or hemp. Similarly section 62 of the Act referred to in the said it m refers to the power of the Collector to grant a license of for the sale of medicated articles or class of such arti_les. These sections do not refer to the possession of any of the aforesaid articles. Clauses (a) and (f) in item (ii) have therefore been omitted in the revised draft notification No. IV sent herewith. The revised draft notification invests the Superintendents of Excise with powers of the Collector under section 14(1) and therefore it will be possible for the Superintend nts of Excis to exercise the powers of the Collector under that section to control the possession of denatured spirit, ganja and bhang. It is pr sumed that the expression "commercial alcohol" used in the draft notification is well understood.

4. R.D. draft notification No.I page 9.- It is not clear whether the H.L.A. should at this stage scrutinize the R.D. draft notification No. I at page 9. It appears from para. 2 of the Commissioner of Excise's letter at pages 1-7 ante that the intention is to give power to the Superintendents of Excise only under clause (d) of para. 11 of the orders issued in R.D. G.R. No. 5788/39 (a) dated 7th July 1942, namely that of deciding wheth r a license in r spect of a shop or booth should be granted or not. It, however, appears from para. 4 of the R.D. Note at

note at pages 15-16 ante that the powers clause (c)(i) of para. 11 of the said Govt. Resulution will have also to be dele ated to the Superintentendents of Excise but this aspect of the question doe. not appear to have been considered by the Commissioner of Excise. The draft notification No. I may, if necessary, be sent to the R.L.A. for scrutiny after the question as to whether the powers under clause (c)(i) of para. 11 should also be delegated to the Superintendents of Excise is decided by R.D. in consultation with the Commissioner of Excise.

5. The authority given to the Collector by sub-section (3) of section 35 of the Abkari Act to delegate his powers under the section to an Assistant or Deputy Collector does not override or affect the authority of the Provincial Government to act under section 6 of the Act. It would therefore be open to the Provincial Government under section 6 to delegate to the Superintendents of Excise the powers conferred on the Collector by section 55.

Remembrancer of Legal Affairs.

U.R. to R.D., No. 1040, dated the 7th February, 1946.

SSH / 16/7/56.

Office of the R.L..

Under sub-clause (iv) of section 3(9) of the Bombay Abkari Act, 1878, the Provincial Government has been given power to declare any other intoxicating or narcotic substance to be an intoxicating drug, such substance not being opium cocoaleaf or a manufactured drug as defined in section 2 of the Dangerous Drugs Act, 1930. Under this clause a substance to be declared an intoxicating drug must be either an intoxicating substance or a narcotic substance. As will be seen from the Commissioner of Excise's note at p. 31 ante Amyl Alcohol and Butyl Alcohol can be regarded as intoxicants. The question then remains as regards the other three substances, namely, Amyl Acetate, Ethyl Acetate and Acetone. From the the report of the Superintendent, Government Central Distillery, at p. 43 ante it appears that they cannot be classed as intoxicants. If these substances cannot be regarded an intoxicating substances the question is whether they can be regarded as narcotic substances. According to Oxford Dictionary "narcotic" means inducing drowsiness, sleep, stupor or insensibility. From the report of the Chemical Analyser to Government at page 45 ante it would appear that Amyl Acetate and Acetone cause loss of equilibrium and narcosis while Ethyl Acetate, if taken in large doses, causes stupfying effect like alcohol. Having regard to the reports before Government and the opinion of the Commissioner of Excise it would be for Government to decide, if necessary, after calling for further expert opinion, whether the substances in question

question are intoxicating or narcotic substances within the meaning of sub-clause (iv) of clause (3) of section 3 of the Abkari Act.

Remembrance of Legal Affairs.
U.R. to R.D., No. 1507, dated the 22nd February, 1946.

CSI / 16/7/56.

Office of the R.L.A.

The question raised for the consideration of the R. L. A. in this case is whether paras. 40, 57 and 166 of the Bombay Excise Manual (Vol.I) being against the spirit of section 19 of the Bombay Abkari Act, as indicated by the R.L.A. in his opinion No. 74-Confl. dated 28th February 1944, may be deleted. ~~Opinion No. 74-Confl. dt. 28th February 1944, may be deleted.~~

2. According to para. 40 of the Bombay Excise Manual all excisable articles imported, exported or transported on behalf of Government are exempted from excise duty. Under para. 57 absolute alcohol and rectified spirit supplied to educational institutions for research, the Museum, Natural History Society for the preservation of natural history specimens, and municipal dispensaries are exempted from excise duty. Para. 166 of the said Manual authorises, on certain conditions, remission of excise duty on rectified spirit manufactured in the Bombay Presidency or imported into it from a British Indian Province, and rectified spirit and denatured cane spirit manufactured in Baroda and other native states declared to be foreign territories and imported into Bombay Presidency used for industrial purposes.

3. The R.L.A. in his opinion No. 74-Confl., dated the 28th February 1944, has observed that "there is no provision in the Bombay Abkari Act for granting exemption from excise duties in respect of Indian manufactured foreign liquor", and has held that "in the absence, therefore, of any provision in respect of exemption from excise duties

duties analogous to para. 9 of the Government of India (Governor's Allowances and Privileges) Order, 1936, it does not seem legally feasible to exempt from payment of excise duty Indian manufactured foreign liquor required by the Governor General and Governors for consumption of their household and guests".

4. The A.L.A. similarly in his Opinion No. 1313, dated 19th February 1943, while considering the question whether there is any legal objection to amending notification No. 12872, dated 22nd December 1914, under which all excisable articles and hemp imported, exported transported or manufactured by or on behalf of Government are exempt from payment of duty leviable thereunder, as proposed by Secretary, R.D., in his note dated 5th February 1943, has pointed that "section 19 of the Act, under which the notification has been issued does not contain any provision for the grant of exemptions"

5. Under section 19 of the Bombay Abkari Act a duty at such rate or rates as Government shall direct may be imposed, either generally or for any specified local area on any excisable article (a) imported in accordance with the provisions of section 9(1) of the Act, (b) exported or transported in accordance with the provisions ofsections 10 of the Act, or (c) manufactured under a license granted accordance with the provisions of section 14 section 15 of this Act, provided that duty shall not be imposed on any article which has been imported into British India, and was liable on such importation to duty under the Indian Sea Tariff Act, 1894 or Sea Customs

Act, 1878. By Government Notification, R.D., No. 1349-J, dated 13th October 1931 excisable articles specified in column 1 of the Schedule annexed to the notification have been charged with excise duty at the rates specified in columns 2 and 3 of the said Schedules when such articles ar imported into the Bombay Presidency in accordance ~~with the~~ with the provisions of section 9(1) of the Act, or issued from any brewery or distillery established in the Bombay Presidency.

6. This being the legal position the orders embodied in paras. 40,57 and 166 of the Bombay Excise Manual (Vol. I) seem to be against the spirit of section 19 of the Bombay Abkari Act and therefore it is open to Government to withdraw them and get the said three paragraphs deleted from the Manual as suggested by the Commissioner of Excise.

Remembrancer of Legal Affairs.

U.R. to R.D., No. 3657, dated the 15th May 1946.

SSM / 16/7/56.

Office of the R.L.A.

A revised notification in place of the one at page 137 is sent herewith. The draft notifications at pages 139-141 ante as amended are in order.

The notifications cannot be given retrospective effect. They will take effect on the day on which they areissued.

Since column 8 is being added to the notification No. 5468/39, dated the 21st December 1944, it is necessary to amend the figures and word "3 to 7" occuring in the said notification. The revised draft sent herewith carries out this amendment.

Remembrancer of Legal Affairs.

U.O.R. to R.D. No. 6961, dated the 15th October, 1946.

NOTIFICATION.

Revenue Department.

Bombay Castle, 1946.

Bombay Abkari Act, 1878.

No. In exercise of the powers conferred by section 19 of the Bombay Abkari Act, 1878, (Bom. V of 1878), the Government of Bombay is pleased to amend Government Notification in the Revenue Department, No. 5468/39, dated the 31st December 1944, as follows, namely:-

(i) In the said notification, for the figures and word "3 to 7" the figures and word "3to 8" shall be substututed.

(ii) In the Schedule to the said notification (a) after the column 7, a new column 8 with the following headings shall be added, namely:-

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(b) for serial No. 3 relating to the Panch Mahals sub-Division of the Broach and Panch Mahals District, the following shall be substituted, namely:-

(Here insert A-A on page 137 as amended)-.

By order of the Governor of Bombay

Secretary to Government.

Office of the R.L.A.

As the intention of R.D. at page 2 is to invest under section 6 of the Bombay Abkari Act, 1878 (Bom. V of 1878), the "Superintendent of Police (Prohibition)" with the powers under section 55(2) of the said Act, a revised draft notification inserting a new serial No. 9A for that purpose in the Schedule to G.N. R.D.n No. 374/39(2) dated the 17th July 1939, is sent herewith.

for Remembrancer of Legal Affairs.

U.O.N. to R.-. No. 8003, dated the 14th November 1946.

SSM / 16/7/55.